

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Ronald K. Lorentzen  
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Five-Year (“Sunset”)  
Review of the Countervailing Duty Order on Certain Heavy Iron  
Construction Castings from Brazil; Final Results

Summary: \_\_\_\_\_

We have analyzed the substantive responses of interested parties in the five-year sunset review of the countervailing duty order on certain heavy iron construction castings from Brazil. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review for which we received substantive comments by parties:

1. Likelihood of continuation or recurrence of countervailable subsidies
2. Net countervailable subsidy likely to prevail

History of the Order

On March 19, 1986, the Department published in the Federal Register its final determination that imports of heavy iron construction castings (“iron castings”) from Brazil were being subsidized. See Final Affirmative Countervailing Duty Determination; Certain Heavy Iron Construction Castings From Brazil, 51 FR 9491 (March 19, 1986). In the final determination, the Department found an estimated net subsidy of 5.77 percent ad valorem during the review period based on three programs: 2.85 percent under the Preferential Working-Capital Financing for Exports program; 1.86 percent under the Income Tax Exemption for Export Earnings program; and 1.06 percent under the Export Financing by the Fundo de Financiamento a Exportacao (“FINEX”) program. However, the cash deposit rate of 5.77 percent was adjusted to take into account program-wide changes in the Preferential Working Capital Financing for Exports program. The program-specific subsidy was reduced from 2.85 percent to 0.48 percent. Thus, a cash deposit rate of 3.40 percent ad valorem on all entries of iron castings from Brazil was determined in the final determination.

On May 15, 1986, the Department published the countervailing duty order on iron castings from Brazil. See Countervailing Duty Order; Certain Heavy Iron Construction Casting From Brazil, 51 FR 17786 (May 15, 1986).

On January 21, 1992, the Department published its final results of the only administrative review of this order since its issuance. See Certain Heavy Iron Construction Castings From Brazil: Final results of Countervailing Duty Administrative Review and Determination Not to Revoke the Countervailing Duty Order, 57 FR 2252 (January 21, 1992). The review covered January 1, 1990 through December 31, 1990, three companies, and six programs: (1) Income Tax Reduction for Export Earnings; (2) CACEX Preferential Working Capital Financing for Exports; (3) Preferential Export Financing Under CIC-OPCRE of the Banco do Brasil; (4) Financing for the Storage of Merchandise Destined for Export; (5) Exemption of IPI and Customs Duties on Imported Equipment (CDI); (6) Preferential Financing under Resolution 68 and 509 through FINEX. In the final results of that review, the Department determined a net subsidy for all firms to be 0.33 percent ad valorem. The Department found that Decree Law 8034 of April 12, 1990, eliminated this tax reduction and, therefore, for the purposes of cash deposits of estimated countervailing duties, the Department determined the benefit from this program to be zero. The Department also found that the CACEX Preferential Working Capital Financing for Exports program, terminated effective August 30, 1990 by Central Bank Resolution 1744. Finally, the Department found that the FINEX Export Financing program was not used by respondents during the period of review. The three other programs reviewed by the Department were either not used or eliminated.

On November 2, 1998, the Department initiated its first five-year sunset review, of a transition order, on iron castings from Brazil pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”).<sup>1</sup> See Initiation of Five-Year (“Sunset”) Review, 63 FR 58709 (November 2, 1998). The Department published final results of its first sunset review on June 7, 1999. See Final Results of Expedited Sunset Review: Heavy Iron Construction Castings From Brazil, 64 FR 30313 (November 12, 1999). In the final results of the first sunset review, the Department determined that revocation of the countervailing duty order on iron casting would be likely to lead to continuation or recurrence of countervailing subsidies. As a result, the Department continued the countervailing duty order. See Continuation of Countervailing Duty Order: Heavy Iron Construction Castings From Brazil, 64 FR 61591 (November 12, 1999).

There have been no proceedings of this order since the completion of the first sunset review.

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<sup>1</sup> A transition order is an antidumping and countervailing duty order or suspended investigation in effect on January 1, 1995, the effective date of the Uruguay Round Agreement Act.

## Background

On October 1, 2004, the Department initiated the second sunset review of the countervailing duty order on iron castings from Brazil pursuant to section 751(c) of the Act. See Initiation of Five-Year (“Sunset”); 69 FR 58890 (October 1, 2004). The Department received a Notice of Intent to Participate on behalf of Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Leed Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Company, Tyler Pipe Company, and U.S. Foundry & Manufacturing Co. (collectively, “domestic interested parties”), within the deadline specified in section 351.218(d)(1)(i) of the Departments regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise. Domestic interested parties have been active in past proceedings.

## Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (“ITC”) the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and countervailing Measures (“Subsidies Agreement”).

Below we address the substantive responses comments of interested parties.

### 1. Likelihood of Continuation or Recurrence of Countervailing Subsidy

Domestic interested parties argue that the Department should continue to find that revocation of the order is likely to result in continuation or recurrence of countervailable subsidies as it found in the first sunset review of the this order.

Domestic interested parties contend that although the Department found, in the only administrative review of this order, de minimis countervailable subsidies, a zero or de minimis margin does not in itself support a finding that countervailable subsidies are not likely to continue or recur. See Substantive Response, November 1, 2004, at 38. Domestic interested parties explain that in considering the likelihood of countervailable subsidies, the Department considers whether countervailable subsidy programs have been continued, modified, or eliminated by foreign governments, and the method in which a foreign government terminates its subsidized programs, i.e., either through an administrative action or a legal measure. As noted in the SAA,

domestic interested parties argue that termination of a countervailable program through the process of an administrative action may be more likely to be reinstated than those eliminated through a legal method. Domestic interested parties assert that this is the case with respect to the Preferential Working Capital Financing for Exports – Resolution 674 and 950, a program found in the original investigation to benefit from government subsidies.

### Department's Position

In the original investigation, the Department found that certain benefits which constitute subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers, and exporters of Brazilian iron castings. Based on the final results of the investigation, the Department established a cash deposit rate of 3.40 percent ad valorem.

In the final results of the only administrative review, the Department determined that benefits from the Income Tax Reduction for Export Earnings program were de minimis. In the first sunset review, the Department determined that the Income Tax Exemption for Export Earnings program and the Preferential Working Capital Financing for Export program, the two programs found to confer countervailable subsidies in the original investigation, were eliminated.

The history of this order shows that a countervailable subsidy program continues while several other program remain available, although have not been used. Without information from respondent parties, we cannot determine whether the Government of Brazil continues to provide manufacturers, producers, or exporters with countervailable subsidies.

On the basis of information provided by domestic interested parties, information on the record, and lack of information for respondent parties, we continue to find that it is likely that if the countervailing duty order on Brazilian iron casting were to be revoked, countervailable subsidies would continue or recur.

### 2. Net Countervailable Subsidy Likely to Prevail

Domestic interested parties state that the Department should adjust the net subsidy rate determined in the original investigation to take into account only those programs that were terminated. Specifically, domestic interested parties suggest that the Department should rely on the 1.06 percent net subsidy rate determined in the original investigation under the FINEX export financing program.

The Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order. See Statement of Administrative Action (“SAA”) at 890 and House Report at 64. The Department further stated that this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review. See Department's regulations. In addition, the Department may make adjustments to the net countervailable subsidy calculated in the original

investigation to take into account subsidy programs that were found in subsequent reviews to be eliminated. Adjustments were made in the first sunset review as the result of the elimination of two countervailable programs.

Since the first sunset review, no change has occurred, therefore, we have no reason to believe that the FINEX export financing program has been eliminated. As such, we will report to the ITC a country-wide net countervailable subsidy rate of 1.06 percent as seen in the “Final Results of Review” section of this memorandum.

Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide to the ITC information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Because the receipt of benefits provided under the Export Financing by the Fundo de Financiamento a Exportacao (“FINEX”) program are contingent upon exports, this program falls within the definition of an export subsidy under Article 3.1(A) of the Subsidies Agreement. We further note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement). The following program is the program description:

FINEX Export Financing program -- Resolution 509 of the Conselho Nacional de Comercio Exterior (CONCEX) provides that Carteria do Comercio Exterior (Foreign Trade Department or “CACEX”), may draw upon the resources of the FINEX Export Financing program to subsidize short-and-long term loans to foreign importers of Brazilian goods.

Final Results of Review

As a result of this sunset review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Manufacturers/Producers/Exporters	Net Countervailable Subsidy (percent)
Country-wide rate	1.06

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department’s regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This five-year (“sunset”) review and notice are in accordance with section 751(c), 752, and (777)(i)(1) of the Act.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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(Date)